

FILED

JUN 19 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SYLVIA HOPE LOPEZ,

Defendant - Appellant.

No. 05-30502

D.C. No. CR-04-06046-EFS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted June 12, 2006^{**}

Before: WALLACE, KLEINFELD and BERZON, Circuit Judges.

Sylvia Hope Lopez appeals from her 60-month prison sentence imposed following her guilty plea to possessing a firearm in furtherance of a drug

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

Lopez contends the district court erred in finding it lacked discretion to impose a sentence below the five-year mandatory minimum sentence provided in 18 U.S.C. § 924(c)(1)(A)(i). Specifically, she argues that statutorily mandated minimum sentences violate due process by depriving the sentencing court of its ability to consider individualized mitigating circumstances to the extent such circumstances may warrant a sentence below the minimum. We rejected this claim in *United States v. Kidder*, 869 F.2d 1328, 1334-35 (9th Cir. 1989) (rejecting argument that a statutory mandatory minimum sentence is “unconstitutional because it unduly restricts the sentencing judge’s ability to impose an individualized sentence”). Because *United States v. Booker*, 543 U.S. 220 (2005), “does not bear on mandatory minimums,” *United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005), *Kidder* controls.

AFFIRMED.